

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:09-CV-552-BO

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 FITZGERALD PERSONAL PROPERTY, )  
 et. al., )  
 )  
 Defendants. )  
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O R D E R

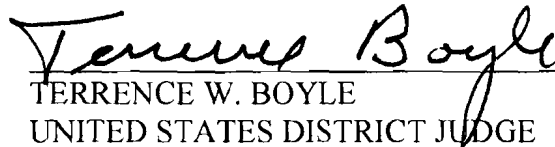
This matter is before the Court on the Government's Motion for Entry of Default and Default Judgment. The Government filed a Complaint for Forfeiture *in rem* on December 28, 2009. On February 2, 2010, the Court received a letter from William D. Fitzgerald, Jr., claiming ownership of the property in question and objecting to forfeiture. On March 16, 2010, Plaintiff filed a Motion for Entry of Default and Motion for Default Judgment. Mr. Fitzgerald has never filed an Answer to the Government's Complaint, nor has he filed an objection to the Motion for Entry of Default and Default Judgment.

According to Fed. R. Civ. P. 55(a): "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." *Id.* Whenever a judgment is sought for other than a sum certain, application for judgment by default shall be made to the court and such judgment may be entered by the Court. Fed. R. Civ. P. 55(b)(2); *Southern General Insurance Company v. O'Keefe*, 275 F. Supp. 107, 109 (D. Md. 1967). In this case, Mr. Fitzgerald has not filed an Answer, and no other person has filed a verified claim in this action or

answered or plead as required by Rule G(5)(b) of the Supplemental Rules for Admiralty or Maritime and Asset Forfeiture Claims.

Accordingly, it appearing that a copy of the Complaint was served upon the potential claimant and that publication was duly made, the Court finds that Defendants were duly seized by the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives and that the well-plead allegations of the Complaint in respect to Defendants are taken as admitted. Therefore, the Government's Motion for Entry of Default Under Rule 55(a) is allowed. Entry of default is made. The Government must move and give notice of its request for default judgment. The Court will await further filing from the Government with respect to judgment by default under Rule 55(b).

This 13 day of July, 2010.

  
TERRENCE W. BOYLE  
UNITED STATES DISTRICT JUDGE

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